

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
ROSE TREVINO,)	CASE NO. 08-20391 JPK
)	Chapter 13
Debtor.)	

ORDER FOR HEARING

On July 14, 2009, the debtor's counsel filed a document entitled "Motion to Modify Plan, Post Modification (sic)". The motion was filed in relation to an amended Chapter 13 plan, filed on the same date. Paragraph 3 of the motion states that "the Debtor's counsel is requesting an additional fee of \$1,000.00 for preparing and filing this motion". Paragraph 4 of the amended plan includes the additional \$1,000.00 dollars "prayed for in the motion for post-confirmation modification" as an administrative expense to be paid by the Trustee pursuant to the plan. The motion was properly noticed to creditors, and there was no objection or request for hearing filed in response to it. The proposed form of order tendered with the motion merely provides for approval of the motion, and that "the plan as so modified is the Debtor's plan".

The court has noticed a trend in the filing of post-confirmation modifications and certain other documents in which the debtor is the movant, in which a request for attorney compensation is included in the motion rather than being filed as a separate application. This practice is technically in violation of N.D.Ind.L.B.R. B-9013-1(a), which requires that any request for an order from the court be filed in a separate motion, "except that requests for alternative relief may be filed together". While the rule does not define a "request for alternative relief", the court does not deem a post-confirmation modification of a plan and an application for attorney compensation to be at all similar. An additional issue is that this budding trend merely states a gross amount of requested compensation, technically contrary to the requirements of Fed.R.Bankr.P. 2016(a).

The procedure utilized in this case has permutations. For example, one attorney who regularly practices before the court states the request for additional compensation in a separate paragraph in a motion to modify a plan, and separately includes a provision for the compensation in the amended plan itself. However, this particular attorney then files a separate application for compensation, and separately notices it to all creditors. The court also notes that certain attorneys appear to have fee arrangements which at least in part are based on an hourly rate, and this practice and the foregoing practice of course does not accommodate any type of hourly rate computation or request.

The court has concerns about the foregoing mechanism for approving additional compensation in Chapter 13 cases. The court is also curious as to the manner in which the Chapter 13 Trustee provides for payment of additional compensation in the foregoing circumstances, especially if no separate application for compensation was filed and approved.

IT IS ORDERED that a hearing will be held on **September 14, 2009, at 2:30 P.M.** with respect to the procedure as employed in the above-designated case. The court would greatly appreciate the input of the Chapter 13 Trustee Paul R. Chael at the hearing with respect to the issues outlined above.

Dated at Hammond, Indiana on August 21, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee